



1997 SENATE BILL 212

May 20, 1997 - Introduced by Senators ADELMAN, A. LASEE, ROESSLER, MOEN and JAUCH, cosponsored by Representatives HANDRICK, BOYLE, ALBERS, BOCK, GRONEMUS, HARSDFORF, HASENOHRL, KAUFERT, MUSSER and NOTESTEIN. Referred to Committee on Economic Development, Housing and Government Operations.

1 **AN ACT to amend** 9.10 (2) (b), 9.10 (2) (d), 9.10 (4) (a), 9.10 (4) (d) and 808.04 (2);
2 **and to create** 9.10 (4) (b) and (c) of the statutes; **relating to:** establishment of
3 a requirement that petitions for the recall of a city, village, town or school
4 district officer include a statement of the grounds for recall which constitute
5 cause for recall.

Analysis by the Legislative Reference Bureau

Under current law, a petition for the recall of a city, village, town or school district officer must contain a statement of a reason for the recall which is related to the official responsibilities of the official for whom recall is sought.

This bill provides, instead, that such a petition must contain a statement of the grounds for recall which constitute cause for recall. Under the bill, "cause" means neglect of duty or official misconduct. Upon finding that a petition is valid on its face, the body to whom a petition has been submitted must file the petition with the circuit court. The court must then determine, after a hearing, whether the grounds stated in the petition, if true, constitute cause for recall, as defined in the bill. If the court determines that the grounds stated in the petition, if true, constitute cause for recall,

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it must issue a certificate directing that a recall election be held. If the court determines otherwise, no recall election is held.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 9.10 (2) (b) of the statutes is amended to read:

2 9.10 (2) (b) A recall petition for a city, village, town or school district office shall
3 contain a statement of ~~a reason for the recall which is related to the official~~
4 ~~responsibilities of the official for whom~~ the grounds which constitute the cause and
5 the cause upon which removal is sought. In this paragraph, "cause" means neglect
6 of duty or official misconduct.

7 **SECTION 2.** 9.10 (2) (d) of the statutes is amended to read:

8 9.10 (2) (d) No petition may be offered for filing for the recall of an officer unless
9 the petitioner first files a registration statement under s. 11.05 (1) or (2) with the
10 filing officer with whom the petition is filed. The petitioner shall append to the
11 registration a statement indicating his or her intent to circulate a recall petition, the
12 name of the officer for whom recall is sought and, in the case of a petition for the recall
13 of a city, village, town or school district officer, a statement of ~~a reason for the recall~~
14 ~~which is related to the official responsibilities of the official for whom~~ the cause upon
15 which removal is sought. No petitioner may circulate a petition for the recall of an
16 officer prior to completing registration. The last date that a petition for the recall of
17 a state, congressional, legislative, judicial or county officer may be offered for filing
18 is 5 p.m. on the 60th day commencing after registration. The last date that a petition
19 for the recall of a city, village, town or school district officer may be offered for filing
20 is 5 p.m. on the 30th day commencing after registration. After the recall petition has
21 been offered for filing, no name may be added or removed. No signature may be

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1 counted unless the date of the signature is within the period provided in this
2 paragraph.

3 **SECTION 3.** 9.10 (4) (a) of the statutes is amended to read:

4 9.10 (4) (a) Within 10 days after a petition for the recall of a city, village, town
5 or school district official, is offered for filing, the officer against whom the petition is
6 filed may file a written challenge with the municipal clerk or board of election
7 commissioners or school district clerk with whom it is filed, specifying any alleged
8 insufficiency. If a challenge is filed, the petitioner may file a written rebuttal to the
9 challenge with the clerk or board of election commissioners within 5 days after the
10 challenge is filed. If a rebuttal is filed, the officer against whom the petition is filed
11 may file a reply to any new matter raised in the rebuttal within 2 days after the
12 rebuttal is filed. Within 14 days after the expiration of the time allowed for filing a
13 reply to a rebuttal, the clerk or board of election commissioners shall file the
14 certificate or an amended certificate. Within 31 days after the petition is offered for
15 filing, the clerk or board of election commissioners shall determine by careful
16 examination of the face of the petition whether the petition is sufficient and shall so
17 state in a certificate attached to the petition. If the petition is found to be insufficient,
18 the certificate shall state the particulars creating the insufficiency. The petition may
19 be amended to correct any insufficiency within 5 days following the affixing of the
20 original certificate. Within 2 days after the offering of the amended petition for filing,
21 the clerk or board of election commissioners shall again carefully examine the face
22 of the petition to determine sufficiency and shall attach to the petition a certificate
23 stating the findings. Immediately upon finding an original or amended petition
24 sufficient, ~~except in cities over 500,000 population,~~ the municipal clerk or, school
25 district clerk or board of election commissioners shall transmit the petition to the

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1 ~~governing body or to the school board. Immediately upon finding an original or~~
2 ~~amended petition sufficient, in cities over 500,000 population, the board of election~~
3 ~~commissioners shall file the petition in its office circuit court for the county in which~~
4 ~~the office of the clerk or board of election commissioners is located.~~

5 **SECTION 4.** 9.10 (4) (b) and (c) of the statutes are created to read:

6 9.10 (4) (b) Within 10 days after receipt of the petition, the circuit court shall
7 determine, after hearing, whether the petition states grounds which constitute
8 cause, as defined in sub. (2) (b), for recall. The clerk of court shall notify the official
9 for whom removal is sought of the hearing date. The official and the person who
10 offers the petition for filing may appear by counsel and the court may take testimony
11 with respect to the petition. If the circuit court determines that the grounds stated
12 in the petition, if true, constitute cause for recall, the court shall issue a certificate
13 directing that an election be held under this section. If the petition concerns a city,
14 village or town office, the court shall transmit the petition and certificate to the
15 governing body of the city, village or town, except in cities over 500,000 population,
16 where the court shall transmit the petition and certificate to the board of election
17 commissioners. If the petition concerns a school district office, the court shall
18 transmit the petition and certificate to the school board. Upon receiving a petition
19 and certificate, the governing body, board of election commissioners or school board
20 shall file the petition and certificate in its office. If the court determines that the
21 grounds stated in the petition, if true, do not constitute cause for recall, the court
22 shall not issue the certificate.

23 (c) Any party aggrieved by the circuit court determination may appeal to the
24 court of appeals within the time period specified in s. 808.04 (2). An appeal under
25 this section shall be given precedence over other matters not accorded similar

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1 precedence by law. The appeal shall stay the holding of a recall primary and election
2 under a certificate issued by the circuit court until the court of appeals determines
3 the validity of the certificate, but other acts required to be undertaken preparatory
4 to the primary and election shall proceed during the pendency of the appeal.

5 **SECTION 5.** 9.10 (4) (d) of the statutes is amended to read:

6 9.10 (4) (d) The governing body, school board or board of election
7 commissioners, upon receiving the certificate from the circuit court under par. (b),
8 shall call an election on the Tuesday of the 6th week commencing after the date of
9 the certificate. If Tuesday is a legal holiday, the recall election shall be held on the
10 first day after Tuesday which is not a legal holiday.

11 **SECTION 6.** 808.04 (2) of the statutes is amended to read:

12 808.04 (2) An appeal under s. 9.10 (4) (c), 227.60 or 799.445 shall be initiated
13 within 15 days after entry of judgment or order appealed from.

14 **SECTION 7. Initial applicability.**

15 (1) This act first applies with respect to petitions for recall which are offered
16 for filing on the effective date of this subsection.

17 (END)